



# PROPOSED RULE MAKING

**CR-102 (June 2004)**

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Environmental Hearings Office for the following Boards: Pollution Control Hearings Board, Shorelines Hearings Board, Environmental and Land Use Hearings Board, Forest Practices Appeals Board and Hydraulics Appeals Board

☐ Preproposal Statement of Inquiry was filed as WSR \_\_\_\_\_; or  
☐ Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or  
☒ Proposal is exempt under RCW 34.05.310(4)(e) and (g). Rules to be amended are procedural rules relating to agency hearings. Most of the rule changes are required for compliance with SHB 2935.

☒ Original Notice  
☐ Supplemental Notice to WSR \_\_\_\_\_  
☐ Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:** Amendments to Pollution Control Hearings Board (PCHB) procedural rules WAC 371-08-315, 371-08-335, 371-08-395, 371-08-400, 371-08-555 and Shoreline Hearings Board (SHB) procedural rules WAC 461-08-305, 461-08-340, 461-08-345, 461-08-415, 461-08-420, and 461-08-570; repealing Forest Practices Appeals Board (FPAB) procedural rules WAC Chs. 223-08, 223-09 and 223-12, with the exception of WAC 223-08-087; also repealing Hydraulics Appeals Board (HAB) procedural rules WAC Ch. 259-04, and the Environmental and Land Use Hearings Board (ELUHB) procedural rules WAC Ch. 199-08.

**Hearing location(s):**

Environmental Hearings Office  
 4224 6<sup>th</sup> Avenue SE Bldg. 2  
 Lacey, WA 98504-0903

**Submit written comments to:**

Name: Kay Brown

Address:

Environmental Hearings Office

PO Box 40903

4224 6<sup>th</sup> Avenue SE Bldg. 2

Lacey, WA 98504-0903

e-mail [eho@eho.wa.gov](mailto:eho@eho.wa.gov)

fax 360-438-7699 by (date) **August 10, 2010.**

Date: **August 12, 2010** Time: 10:00 a.m.

**Assistance for persons with disabilities:** Contact

**Date of intended adoption:** August 23, 2010  
 (Note: This is **NOT** the effective date)

Robyn Bryant by phone at 360-459-6327

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of these changes is to comply with 2010 Wash. Laws Chs. 7, 84, 130, 210 and 285. 2010 Wash. Laws Ch. 210 eliminates the HAB and the FPAB, and transfers the administrative review functions of these boards to the PCHB. 2010 Wash. Laws Ch. 7 eliminates the ELUHB. To comply with these statutory changes, all of the HAB and ELUHB procedural rules are proposed for repeal. All of the FPAB rules, with the exception of WAC 223-08-087, the FPAB rule on temporary suspensions or discontinuances, are proposed for repeal. WAC 223-08-087 will remain in effect, and will be used by the PCHB when hearing forest practices appeals, until such time as a superseding temporary suspension or discontinuance rule is adopted for forest practices appeals before the PCHB. See 2010 Wash. Laws Ch. 210 §42 (2).

2010 Wash. Laws Ch. 210 also changes the time frames for filing appeals from certain actions of various agencies, therefore necessitating changes in the procedural rules of the PCHB and SHB to conform with these statutory changes.

2010 Wash. Laws Ch. 210 also directs that appeals of listed decisions made by the Department of Natural Resources, the Department of Fish and Wildlife, the Department of Ecology, the Commissioner of Public Lands, and decisions made by state agencies that are authorized public entities under RCW 79.100.010 pertaining to derelict vessels, be filed with and reviewed by the PCHB.

Additional changes include making the PCHB and SHB rules consistent with 2010 Wash Laws Ch. 210 pertaining to mediations, and adding a requirement regarding submissions of subpoenas for signature to the Board's presiding officer at least 10 days before the hearing.

**Reasons supporting proposal:** All of these changes are necessary to implement 2010 Wash Laws Chs 7, 84, 130, 210, and 285, with the exception of the addition of the 10 day requirement for submission of subpoenas. The addition of a time period for submission of subpoenas for signature prior to the hearing will facilitate the return of subpoenas to the requesting party sufficiently in advance of the hearing to allow time for the requesting party to serve the subpoena.

**Statutory authority for adoption:** RCW 43.21B.170; RCW 90.58.175, 2010 Wash. Laws Chs. 84, 130, 210 and 285.

**Statute being implemented:** 2010 Wash. Laws Chs. 7, 84, 130, 210 and 285.

**Is rule necessary because of a:**

Federal Law?

☐ Yes ☐ No

Federal Court Decision?

☐ Yes ☐ No

State Court Decision?

☐ Yes ☐ No

If yes, CITATION:

**DATE** June 22, 2010

**NAME** (type or print) Andrea McNamara Doyle

**SIGNATURE**

*Andrea McNamara Doyle*

**TITLE** Director, Environmental Hearings Office

OFFICE OF THE CODE REVISER  
 STATE OF WASHINGTON  
 FILED

**DATE:** June 23, 2010

**TIME:** 9:39 AM

**WSR 10-13-173**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** Environmental Hearings Office

☐ Private  
☐ Public  
☒ Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... <b>Kay Brown</b>	<b>Environmental Hearings Office</b>	<b>360-459-6327</b>
Implementation... <b>Andrea McNamara Doyle</b>	<b>Environmental Hearings Office</b>	<b>360-459-6327</b>
Enforcement..... <b>Andrea McNamara Doyle</b>	<b>Environmental Hearings Office</b>	<b>360-459-6327</b>

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone (     ) \_\_\_\_\_

fax     (     ) \_\_\_\_\_

e-mail \_\_\_\_\_

☒ **No statement is required for adoption of rules described in RCW 34.05.310(4)(g)(amendment to rules relating to procedure, practice, or requirements related to agency hearings) and (e)(rules the content of which is dictated by statute.)**

**Is a cost-benefit analysis required under RCW 34.05.328?**

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone (     ) \_\_\_\_\_

fax     (     ) \_\_\_\_\_

e-mail \_\_\_\_\_

☒ **No: Please explain: No statement is required for adoption of procedural rules that amend or repeal any procedure, practice, or requirement relating to any agency hearings (RCW 34.05.328(5)(c)(i)), or for a rule the content of which is specifically dictated by statute (RCW 34.05.328(5)(b)(v)).**